

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA**

In Re: BARD IVC FILTERS PRODUCTS
LIABILITY LITIGATION

Case No. 2:17-cv-02520-DGC
MDL No. 15-02641-PHX DGC

This Document Relates to:
No. 2:17-cv-02520-DGC
BARBARA LAGERMAN

**MOTION TO SUBSTITUTE PARTY PLAINTIFF AND
FOR LEAVE TO AMEND SHORT FORM COMPLAINT**

Counsel, pursuant to Rule 25 (a)(1) of the Federal Rules of Civil Procedure, moves this Court for an Order substituting James Lagerman on behalf of his wife, Barbara Lagerman.

1. Barbara Lagerman filed a products liability lawsuit against Defendants on July 28, 2017, in the District of Arizona - MDL No. 15-02641-PHX DGC.
2. On November 20, 2017, Plaintiff filed and served a Suggestion of Death [Doc 3].
3. James Lagerman, surviving husband of Barbara Lagerman, is the proper party to substitute for Plaintiff-decedent Barbara Lagerman and has proper capacity forward with the surviving products liability lawsuit on his behalf, pursuant to Fed. R. Civ. P. 25(a)(1). "If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative."

James Lagerman further seeks leave to file the attached amended short form complaint to substitute herself as Plaintiff on behalf of Plaintiff-decedent Barbara Lagerman and to add wrongful death and survival action claims. James Lagerman did not pass away until after the

original filing of the Complaint, and therefore, the survival action claims could not be made until this time. (see Amended Short Form Complaint, attached hereto as Exhibit 1).

Based on the foregoing, James Laerman requests that this Court grant her request for substitution of Plaintiff in this action and for leave to file the Amended Short Form Complaint, and direct the Clerk to file the attached Amended Short Form Complaint.

Date: November 27, 2017

Respectfully submitted,

ROSENBAUM & ROSENBAUM, P.C.

By: /s/Craig D. Rosenbaum

Craig Rosenbaum (NY Bar No. 22761997)

(admitted *pro hac vice*)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2017, a copy of the foregoing was served electronically and notice of the service of this document will be sent to all parties by operation of the Court's electronic filing system to the CM/ECF participants registered to receive service in this matter. Parties may access the filing through the Court's system.

/s/ Craig D. Rosenbaum

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE BARD IVC FILTERS
PRODUCTS LIABILITY LITIGATION

No. MD-15-02641-PHX-DGC

**AMENDED SHORT FORM
COMPLAINT**

Plaintiff(s) named below, for their Complaint against Defendants named below,
incorporate the Master Complaint for Damages in MDL 2641 by reference (Doc.____).

Plaintiff(s) further show the Court as follows:

1. Plaintiff/Deceased Party:

James Lagerman as Administrator of the Estate of Barbara Lagerman

2. Spousal Plaintiff/Deceased Party's spouse or other party making loss of
consortium claim:

Not Applicable

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

James Lagerman as Administrator of the Estate of Barbara Lagerman

4. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence at
the time of implant:

Florida

5. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence at the time of injury:

Florida

6. Plaintiff's current state(s) [if more than one Plaintiff] of residence:

Florida

7. District Court and Division in which venue would be proper absent direct filing:

The United States District Court for the Middle District of Florida, Orlando Division

8. Defendants (check Defendants against whom Complaint is made):

☒ C.R. Bard Inc.

☒ Bard Peripheral Vascular, Inc.

9. Basis of Jurisdiction:

☒ Diversity of Citizenship

☐ Other: _____

- a. Other allegations of jurisdiction and venue not expressed in Master Complaint:

10. Defendants' Inferior Vena Cava Filter(s) about which Plaintiff(s) is making a claim (Check applicable Inferior Vena Cava Filter(s)):

☐ Recovery[®] Vena Cava Filter

☐ G2[®] Vena Cava Filter

€ G2[®] Express (G2[®]X) Vena Cava Filter

€ Eclipse[®] Vena Cava Filter

€ Meridian[®] Vena Cava Filter

€ Denali[®] Vena Cava Filter

€ Other: _____

11. Date of Implantation as to each product:

_____ The Bard IVC Filter was implanted on August 16, 2013.

12. Counts in the Master Complaint brought by Plaintiff(s):

☒ Count I: Strict Products Liability – Manufacturing Defect

☒ Count II: Strict Products Liability – Information Defect (Failure to Warn)

☒ Count III: Strict Products Liability – Design Defect

☒ Count IV: Negligence - Design

☒ Count V: Negligence - Manufacture

☒ Count VI: Negligence – Failure to Recall/Retrofit

☒ Count VII: Negligence – Failure to Warn

☒ Count VIII: Negligent Misrepresentation

☒ Count IX: Negligence *Per Se*

☒ Count X: Breach of Express Warranty

☒ Count XI: Breach of Implied Warranty

☒ Count XII: Fraudulent Misrepresentation

- ☒ Count XIII: Fraudulent Concealment
- ☒ Count XIV: Violations of Applicable Florida (insert state)
Law Prohibiting Consumer Fraud and Unfair and Deceptive Trade
Practices
- ☐ Count XV: Loss of Consortium
- ☒ Count XVI: Wrongful Death
- ☒ Count XVII: Survival
- ☒ Punitive Damages
- ☐ Other(s): _____ (please state the facts supporting
this Count in the space immediately below)

RESPECTFULLY SUBMITTED this 27th day of November 2017.

ROSENBAUM & ROSENBAUM, P.C.

By: /s/ Craig Rosenbaum
Craig D. Rosenbaum, Esq.
100 Wall St.,
New York, NY, 10005
Attorney for Plaintiffs

I hereby certify that on this day of 28th day of November, 2017. I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Craig Rosenbaum

**IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF ARIZONA**

IN RE BARD IVC FILTERS PRODUCTS
LIABILITY LITIGATION

No. MD-15-02641-PHX-DGC

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2:17-cv-02520
BARBARA LAGERMAN

ORDER

IT IS ORDERED that the Motion to Substitute Party and File Amended Short Form Complaint is hereby GRANTED, and the Clerk of the Court is directed to file the Amended Short Form Complaint into the record in this matter.

Signed this ____ day of _____, 2017.

Honorable Judge David G. Campbell
United States District Judge
District of Arizona

A copy of the foregoing was served to all registered counsel of record via the Court's ECF System. Lead Co-Counsel for Plaintiffs will serve any non-CM/ECF registered parties.